

MONTANA LEGISLATIVE HISTORY

Chapter 357 1981

Bill H _____ SB 176 Original bill & history ✓c

H. Committee on Select Water

S. Committee on Agriculture

Hearing Date(s) h 3/10 _____ c

Hearing Date(s) h 1/28 _____ c

v 3/19 _____ c

v 1/30 _____ c

_____ c

_____ c

_____ c

_____ c

Date Out _____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

TRANSMITTED TO GOVERNOR: 4/6/81
ACTION: 4/8, SIGNED
CHAPTER 295

SB 176 -- STIMATZ -- GENERALLY REVISING GROUNDWATER APPROPRIATION AND PERMIT PROVISIONS.

INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE: 1/17
HEARING: 1/28
REPORT: 2/2, DO PASS AS AMENDED
2ND READING: 2/4, YEAS: 46; NAYS: 4
3RD READING: 2/6, YEAS: 47; NAYS: 0

TRANSMITTED TO HOUSE: 2/6
REFERRED TO SELECT COMMITTEE ON WATER: 2/7
HEARING: 2/19
HEARING: 3/10
REPORT: 3/24, BE CONCURRED IN, AS AMENDED
2ND READING: 3/28, YEAS: 63; NAYS: 4
3RD READING: 3/31, YEAS: 91; NAYS: 1

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/3, BE CONCURRED IN
3RD READING: 4/6, YEAS: 49; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/10/81
ACTION: 4/14, SIGNED
CHAPTER 357

SB 177 -- LEE, MANUEL -- PROVIDING FOR FIRE PROTECTION SERVICES IN RURAL AREAS.

INTRODUCED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 1/17
HEARING: 1/29; 2/14
REPORT: 2/21, ADVERSE REPORT ADOPTED -- YEAS: 42; NAYS: 0
-- KILLED

SB 178 -- LEE, MANUEL -- AMENDING 16-3-306 TO PREVENT THE LICENSING OF CERTAIN BUSINESSES SELLING ALCOHOL IN CLOSE PROXIMITY TO SCHOOLS AND CHURCHES.....

INTRODUCED AND REFERRED TO COMMITTEE ON STATE
ADMINISTRATION: 1/19
HEARING: 1/26
REPORT: 1/29, DO PASS AS AMENDED
2ND READING: 1/31, YEAS: 44; NAYS: 5
3RD READING: 2/3, YEAS: 44; NAYS: 3

TRANSMITTED TO HOUSE: 2/3
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 2/4
HEARING: 3/6
REPORT: 3/9, BE CONCURRED IN, AS AMENDED
2ND READING: 3/12, YEAS: 79; NAYS: 12
3RD READING: 3/14, YEAS: 87; NAYS: 5

RETURNED TO SENATE WITH AMENDMENTS: 3/14
2ND READING: 3/18, BE CONCURRED IN
3RD READING: 3/20, YEAS: 48; NAYS: 0

TRANSMITTED TO GOVERNOR: 3/25/81
ACTION: 3/26, SIGNED
CHAPTER 152

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
25	1-5-81	1-7-81	1-7-81	----	1-7-81	----			
4	1-5-81	1-12-81	1-21-81	----	----	1-21-81			
59	1-5-81	1-14-81	1-14-81	1-14-81	-----	-----			
69	1-8-81	1-14-81	1-14-81	-----	-----	1-14-81			
97	1-12-81	1-19-81	1-30-81	-----	-----	1-30-81			
108	1-13-81	1-19-81	1-21-81	-----	1-21-81	-----			
110	1-13-81	1-19-81	1-21-81	-----	1-21-81	-----			
136	1-15-81	1-23-81	1-23-81	1-23-81	-----	-----			
146	1-15-81	2-2-81	2-2-81	----	----	2-2-81			
156	1-16-81	2-4-81	2-6-81	----	----	2-6-81			
158	1-16-81	1-23-81	1-28-81	----	----	1-28-81			
166	1-19-81	2-4-81	2-6-81	----	----	2-6-81			
176	1-19-81	1-28-81	1-30-81	----	----	1-30-81			
199	1-21-81	1-30-81	2-6-81	----	----	2-6-81			
243	1-23-81	2-9-81	2-13-81	----	----	2-13-81			
254	1-23-81	2-9-81	2-13-81	----	2-13-81	----			

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MAY 5 1981
OF MONTANA

Use a separate sheet for Senate, House Bills, and Resolutions.

1 *Senate* BILL NO. 176
 2 INTRODUCED BY *Strom*
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
 4 AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
 7 CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE
 8 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN
 9 EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF
 10 GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A
 11 MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE;
 12 PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO
 13 THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A
 14 PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER
 15 APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY
 16 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD
 17 BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED
 18 BY FIRST-CLASS MAIL; PROVIDING FOR THE HOLDING OF A HEARING
 19 ON OBJECTIONS WITHIN A REASONABLE TIME; PROVIDING FOR ACTION
 20 ON AN APPLICATION WITHIN 240 DAYS IF A HEARING IS HELD OR
 21 OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT
 22 HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT
 23 APPROPRIATION ACCOUNT; ESTABLISHING FEES FOR AN
 24 ENVIRONMENTAL IMPACT STATEMENT ON AN APPLICATION FOR A
 25 RESERVATION OF WATER; AMENDING SECTIONS 85-2-306, 85-2-307,

1 85-2-309 THROUGH 85-2-311, AND 85-2-124, MCA; AND PROVIDING
 2 AN IMMEDIATE EFFECTIVE DATE."

3
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 Section 1. Section 85-2-306, MCA, is amended to read:
 6 "85-2-306. Exceptions to permit requirements. (1)
 7 Outside the boundaries of a controlled groundwater area, a
 8 permit is not required before appropriating groundwater by
 9 means of a well or developed spring with a maximum ~~yield~~
 10 appropriation of less than 100 gallons ~~a~~ per minute. Within
 11 60 days of completion of the well or developed spring and
 12 appropriation of the groundwater for beneficial use, the
 13 appropriator shall file a notice of completion ~~with the~~
 14 department on a form provided by the department at its
 15 offices and at the offices of the county clerk and
 16 recorders. Upon receipt of the notice, the department shall
 17 ~~automatically--issue-a-certificate-of-water-right~~ review the
 18 notice and may, before issuing a certificate of water right,
 19 return a defective notice for correction or completion,
 20 together with the reasons for returning it. A notice does
 21 not lose priority of filing because of defects. If the
 22 notice is corrected, completed, and refiled with the
 23 department within 20 days or within a further time as the
 24 department may allow, not to exceed 6 months. If a notice is
 25 not corrected and completed within the time allowed, the

1 priority date of appropriation shall be the date of filing
 2 a correct and complete notice with the department. A
 3 certificate of water right may not be issued until a correct
 4 and complete notice has been filed with the department. The
 5 original of the certificate shall be sent to the county
 6 clerk and recorder in the county where the point of
 7 diversion or place of use is located for recordation. The
 8 department shall keep a copy of the certificate in its
 9 office in Helena. After recordation, the clerk and recorder
 10 shall send the certificate to the appropriator. The date of
 11 filing of the notice of completion is the date of priority
 12 of the right.

13 (2) An appropriator of groundwater by means of a well
 14 or developed spring, first put to beneficial use between
 15 January 1, 1962, and July 1, 1973, who did not file a notice
 16 of completion, as required by laws in force prior to [the
 17 effective date of this act], with the county clerk and
 18 recorder shall file a notice of completion, as provided in
 19 subsection (1) of this section, with the department to
 20 perfect the water right. The priority date of the
 21 appropriation shall be the date of the filing of a notice as
 22 provided in subsection (1) of this section. An
 23 appropriation under this subsection is an existing right,
 24 and a permit is not required; however, the department shall
 25 acknowledge the receipt of a correct and complete filing of

1 a notice of completion, except that for an appropriation of
 2 less than 100 gallons per minute, the department shall issue
 3 a certificate of water right.

4 ~~(2)(3)~~ A permit is not required before constructing an
 5 impoundment or pit and appropriating water for use by
 6 livestock if the maximum capacity of the impoundment or pit
 7 is less than 15 acre-feet and the appropriation is from a
 8 source other than a perennial flowing stream. As used in
 9 this subsection, a perennial flowing stream means a stream
 10 which historically has flowed continuously at all seasons of
 11 the year, during dry as well as wet years. However, before
 12 constructing the impoundment or pit, the appropriator shall
 13 apply for a permit as prescribed by this part. If the
 14 department determines after processing the application that
 15 the rights of other appropriators have been or will be
 16 adversely affected, it may require the applicant to modify
 17 the construction of the impoundment or pit and issue the
 18 permit subject to such terms, conditions, restrictions, or
 19 limitations it considers necessary to protect the rights of
 20 other appropriators.

21 ~~(3)(4)~~ A person may also appropriate water without
 22 applying for or prior to receiving a permit under rules
 23 adopted by the board under 85-2-113."

24 Section 2. Section 85-2-307, PCA, is amended to read:
 25 "85-2-307. Notice of application. (1) Upon receipt of

1 a proper application for a permit, the department shall
 2 prepare a notice containing the facts pertinent to the
 3 application and shall publish the notice in a newspaper of
 4 general circulation in the area of the source once a week
 5 for 3 consecutive weeks. Before the last date of
 6 publication, the department shall also serve the notice by
 7 ~~certified first-class~~ mail upon an appropriator of water or
 8 applicant for or holder of a permit who, according to the
 9 records of the department, may be affected by the proposed
 10 appropriation. A notice shall also be served upon any public
 11 agency that has reserved waters in the source under
 12 85-2-316. The department may, in its discretion, also serve
 13 notice upon any state agency or other person the department
 14 feels may be interested in or affected by the proposed
 15 appropriation. The department shall file in its records
 16 proof of service by affidavit of the publisher in the case
 17 of notice by publication and by its own affidavit in the
 18 case of service by mail.

19 (2) The notice shall state that by a date set by the
 20 department (not less than 30 days or more than 60 days after
 21 the last date of publication) persons may file with the
 22 department written objections to the application.

23 (3) The requirements of subsections (1) and (2) of
 24 this section do not apply if the department finds, on the
 25 basis of information reasonably available to it, that the

1 appropriation as proposed in the application will not
 2 adversely affect the rights of other persons."

3 Section 3. Section 85-2-309, MCA, is amended to read:
 4 "85-2-309. Hearings on objections. If the department
 5 determines that an objection to an application for a permit
 6 states a valid objection to the issuance of the permit, it
 7 shall hold a public hearing on the objection within 60 days
 8 ~~from a reasonable time after~~ the date set by the department
 9 for the filing of objections, after serving notice of the
 10 hearing by certified mail upon the applicant and the
 11 objector. The department may consolidate hearings if more
 12 than one objection is filed to an application. The
 13 department shall file in its records proof of the service by
 14 affidavit of the department."

15 Section 4. Section 85-2-310, MCA, is amended to read:
 16 "85-2-310. Action on application. (1) The department
 17 shall grant, deny, or condition an application for a permit
 18 in whole or in part within 120 days after the last date of
 19 publication of the notice of application if no hearing is
 20 ~~held, objections have been received~~ and within 180 240 days
 21 if a hearing is held ~~or objections have been received~~.
 22 However, in either case the time may be extended upon
 23 agreement of the applicant, or, in those cases where an
 24 environmental impact statement must be prepared or in other
 25 extraordinary cases, not more than 60 days upon order of the

department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these

reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department."

Section 5. Section 85-2-311, MCA, is amended to read: "85-2-311. Criteria for issuance of permit. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply;

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion, or construction, and operation are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000

acre-feet a year or more or and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected.

~~(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5).~~"

NEW SECTION. Section 6. Water right appropriation account. There is established a water right appropriation account in the earmarked revenue fund of the state treasury. All fees collected as provided in 85-2-113 shall be deposited in the account to help pay the expenses incurred by the department for administering this part, part 1, part 4, and part 5 of chapter 2, Title 85.

Section 7. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements.

(1) whenever the department determines that the filing of an application (or a combination of applications) for a permit, or approval, or reservation of water under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within

30 days of receipt of a correct and complete application (or a combination of applications) if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to \$1 million; plus 1% of the estimated cost over \$1 million and up to \$20 million; plus 1/2 of 1% of the estimated cost over \$20 million and up to \$100 million; plus 1/4 of 1% of the estimated cost over \$100 million and up to \$300 million; plus 1/8 of 1% of the estimated cost over \$300 million. The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit, or approval, or reservation of water if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the Montana Major Facility Siting Act, and the appropriation or use of water involved in the application(s) for permit, or approval, or reservation of water has been or will be studied by the department pursuant

to that act.

(6) This section shall apply to all applications, pending or hereinafter filed, for which the department has not, as of April 9, 1975, commenced writing an environmental impact statement. This section shall not apply to any application, the fee for which would not exceed \$2,500.

(7) Failure to submit the fee as required by this section shall void the application(s).

(8) The department may, in its discretion, rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement."

~~NEW SECTION.~~ Section 8. Applicability. (1) Subsection (2) of [section 1] applies to all notices of completion filed with the department after July 1, 1973.

(2) Subsection (1) of [section 1], [section 4], and [section 5] apply to notices of completion and applications pending before the department and to those filed with the department after [the effective date of this act].

(3) [Section 7] applies to applications pending before the board on [the effective date of this act], as well as applications filed with the board after [the effective date of this act].

Section 9. Codification instruction. Section 6 is

1 intended to be codified as an integral part of Title 35,
2 chapter 2, part 3, and the provisions of Title 35, chapter
3 2, apply to section 6.

4 Section 10. Effective date. This act is effective on
5 passage and approval.

-End-

SB 176

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE CAPITOL

January 28, 1981

The Agriculture, Livestock & Irrigation Committee meeting was called to order on the above date, in Room 415 of the State Capitol Building, at 1:00 p.m.

ROLL CALL: Senator Lee absent, all other members present.

CONSIDERATION OF SENATE BILL 176: Senator Stimatz, District 43, introduced the bill at the request of the Department of Natural Resources and Conservation. He said the bill made minor changes in permit requirements for water regulations to cut costs and protect existing water rights. He offered the following amendments, due to an error in preparing the bill: Title: page 2, line 1, strike "AND 85-2-124,"; page 9 strike everything beginning on line 14, page 9 taking out the entire section through line 13 on page 12.

Gary Fritz, Administrator, Water Resources Division, Department of Natural Resources and Conservation, passed out copies of testimony showing Department additions replacing the above deletions to the bill. Testimony attached.

He said it was the intent of SB 176 to make minor amendments in the water law to improve processing of water right applications, cut taxpayer costs and protect existing rights. Testimony attached.

Mr. Fritz then went over the attachments with Committee members. He explained page 2, about line 17 would better protect small groundwater users because this allows them to make better records of small groundwater operations. It would also put the burden on the person taking the groundwater to make sure his water right applications are correct.

On page 6, lines 7 and 8, the Legislative Council had not requested this change and he recommended the change be stricken.

He asked to omit all of page 9, starting with line 14 thru line 13, page 12 and replace it with Attachment 2.

OPPONENTS: Bill Sternhagen, representing the Northwest Mining Association, said the Association has 2500 members and about 450 of them are Montana people. While he did not oppose Senate Bill 176, he said the 240 days on page 6, line 20 would add two months to the delays they already have getting a permit request and asked that this be changed back to 180 days.

Mr. Fritz said this was changed from 180 to 240 days because it gave the DNRC more time to work with the water right applicant and the objector. He felt this better than putting people into an adverse situation and the extra 60 days

were needed to handle this type of water situation.

It was requested that "a reasonable time after" be removed from line 8, page 6 and the time restored to "60 days from".

There being no further proponents or opponents, Committee questions followed.

Senator Kolstad asked if this would conflict with SB 76. Mr. Fritz answered this bill addresses different parts of the water law. SB 76 is the adjudication of existing rights. This bill is for new water rights. As to what the environmental impact statements might cost, Mr. Fritz answered that it would be impossible to estimate, and he didn't think they would get into such an extensive EIS.

Anne Brodsky, Legislative Council, asked if the applicant pays for a portion of the EIS, as it sounded as though they were exempt from paying a part of it. Mr. Fritz didn't think so, as they were talking about what parts of the Department costs shall be paid by the applicant. The first four lines indicated what should be paid by the applicant. If there was a better way to say this, he suggested it be put into the law. (Attachment 2).

Senator Graham felt the extension of time, eight months or longer, before the DNRS returns a decision, seemed like a long time and he would like the old language back in the bill. Mr. Fritz did not feel it was a long time. This allowed time for clearing with applicant and objector and negotiating a settlement between the two parties. If the applicant didn't wish to negotiate, then there is always time to get on with the application and it, then, wouldn't take long. In these cases they need time to work with the applicant and the objector. Senator Graham still felt it better to stay with the shorter time and add in something to cover the negotiation period. He felt maybe they should be able to file an extension of time, in tough cases, instead of making everyone else wait.

Mr. Fritz said this doesn't mean the entire time frame has to be used up. This wasn't mandatory, it only extended time for complicated cases.

Senator Aklestad questioned the requirement for permits for the 100 gpm and what this bill changed in regard to that. Mr. Fritz answered if someone is going to appropriate ground water now at less than 100 gpm, the Department automatically issues a certificate of water right. Certificates of water right take a long time to get back to the appropriator and, because it takes such a long time, the Department wanted to be allowed to send the completion notice back to the applicant and have him complete it in 30 days. If the applicant does not get this back to the Department, then the notice can be terminated.

Senator Aklestad asked, in reference to the 15 acre-feet, if SB 176 coincided with SB 76. Mr. Fritz said there was no relation.

Senator Ochsner said, if the Department added 60 days onto the 240 days on p 6, line 20, it would put the time up to a year. Mr. Fritz was agreeable to striking the 240 days and leaving the 180 days as long as the language remains the same.

Senator Kolstad questioned page 9, line 2 "clear and convincing evidence". Mr. Fritz answered it is a degree of proof quite high.

Don MacIntyre, Attorney, DNRC, said the "clear and convincing evidence" is placed upon the applicant as to whether he has met the requirement. That is the strongest evidence you can possibly have. It is almost to a point beyond a reasonable doubt, on the criminal side.

In reference to Senator Ochsner's question regarding picking up certified mail and the expense and time involved for some ranchers in doing this, Mr. Fritz explained that, in specialized cases, it is important the DNRC and applicant know this action is being taken and changing this would not save a lot of money. He then referred to page 7, lines 3 and 15 and explained that he realized it may inconvenience some ranchers in picking up certified mail, but where there is a definite action affecting a water right, the Department feels certified mail is very important.

Senator Aklestad asked how many rights fall into the less than 100 gpm category and where were they located. Mr. Laurence Siroky, DNRC, said there are about 5,000 notices of completion each year and they come from all around the state. There are a lot of wells in Flathead and Ravalli counties, due to subdivisions, new wells, stock wells. These are all brand new wells.

Senator Galt questioned page 3 and making everyone file for every stock watering well and spring they have even if they haven't filed on them before. Mr. Fritz said the underground water code was established in 1962. The law changed in 1973 and the new law didn't provide an answer to protect water rights. The attorney general's notice said to send notification to the Department. The old code required everyone to file. This law allows everyone some place to send their notice of completion. The old statutes required filing with the clerk and recorder. Now they have someone to send the water completion to.

Mr. MacIntyre said the relationship between SB 76 and SB 176 is that between 1962 and 1973 you drilled a well and filed the notice with the clerk and recorder. When the law changed in 1973, you had an existing right under the law passed in 1973 and you can perfect it by filing with the DNRC. You now have an existing right. If you didn't file with the DNRC you didn't have a priority date. When you file you get the date on the day you file and this is your priority date. As to filing on

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page-4

domestic water, MacIntyre said the law says you don't have to do that. It is a cheap form of insurance, but an attorney, down the line, would cost more.

Senator Galt suggested Senator Stimatz and DNEC people get together with the Legislative Council representative and the secretary and get the amendments drawn up and the Committee would act on SB 176 on Friday.

DISPOSITION OF SB 158: Senator Galt turned the chair over to Senator Kolstad.

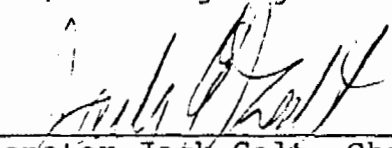
Senator Graham moved the Statement of Intent for SB 158 be accepted. Motion carried unanimously.

Doctor Brad Newcomb, Department of Livestock, reviewed the amendments with the Committee. He said the Department of Livestock did not intend USDA licensed biologics to be included in this bill and asked this removed. In Section 3, page 2, line 19, he asked for deletion of lines 19 and 20. This allows USDA biologics to enter without a permit. Amendments attached.

Senator Aklestad moved the amendments. Motion carried unanimously.

Senator Conover moved SB 176, as amended DO PASS. Motion carried unanimously.

There being no further business, meeting adjourned.



Senator Jack Galt, Chairman

ROLL CALL

AGRICULTURE COMMITTEE

47 th LEGISLATIVE SESSION - - 1981

Date JAN. 28

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	✓		
KOLSTAD, Allen C.	✓		
AKLESTAD, Gary C.	✓		
OCHSNER, J. Donald	✓		
GRAHAM, Carroll	✓		
BOYLAN, Paul F.	✓		
CONOVER, Max	✓		
ECK, Dorothy	✓		
LEE, Gary		✓	

Each day attach to minutes.

SENATE BILL 176 .

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

AN ACT GENERALLY REVISING AND CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE 85, CHAPTER 2, PARTS 1 AND 3, MCA.

Senate Bill 176 was prepared by and submitted at the request of the Department of Natural Resources and Conservation. The purpose of the bill is to make minor amendments to certain sections of Montana water law that will improve the processing of water right applications, cut costs to the taxpayer and better protect existing water rights.

Section (1)

Lines 9 and 11: A developed spring is groundwater by definition and therefore should be clearly included with this exception to the permit requirements.

Lines 17 through (Page 2) and 1 through 4 (Page 3): The Department is required by the Constitution to maintain a centralized record of Montana water rights. Existing water law makes it difficult, if not impossible, to maintain a reasonably accurate record of groundwater rights under 100 gallons per minute. Exorbitant processing times and costs are now required to correct each small groundwater notice of completion. Amendments to the present law would place the burden of correcting deficiencies on the owner rather than the general taxpayer.

Lines 13 through 25 (Page 3) and Lines 1 through 3 (Page 4): This new subsection (2) would implement in law the Attorney General's opinion regarding groundwater appropriation between 1962 and 1973.

Section 2, (Page 5)

Line 7: Mailing individual notices of applications by certified mail is an unnecessary expense to the taxpayer, while first class mail is sufficient and much less expensive. This amendment will save taxpayers about \$4,500 each year.

Section 3, (Page 6)

Lines 7 and 8: In accordance with Senator Stimatz' concerns we request this change be struck from the bill.

Section 4, (Page 6)

Lines 19, 20 and 21: The Department attempts to reach a settlement on contested applications without going to a hearing; this negotiation process often requires more than the statutory timeframe. Negotiated settlements are less costly to the state, the objector and the applicant and may provide a more acceptable resolution.

Section 5, (Page 9)

Lines 4, 5 and 6: A new subsection (7) was added to make it clear that the applicant for a water right has the burden in proving the criteria for issuance of a permit. This burden better protects existing water users.

Section 6, (Page 9)

Lines 7 through 13: This new section would establish a earmarked revenue account for all fees collected by the Department for administering water law. Monies appropriated by the Legislature from this account would reduce the Department's needs from the general fund. The fund would also mandate that those Montanans receiving the service pay a part of the program costs.

Section 7, (Pages 9 through 12)

We request this change be struck from the bill.

85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, and a reasonable proportion of the environmental impact statement prepared by the department, shall be paid by the applicant.

WITNESS STATEMENT

Name Bill Sternhagen Date 1-28-81
Address Power Block, Helena, Mt Support ?
Representing Northwest Mining Association Oppose ? oppose page 6, line 20
Which Bill ? SB 176 Amend ?
Comments:

Re: Page 6, line 20

please do not increase the
time for delay by government
from 180 days (6 months) to
240 days (8 months).

6 months is enough
time for DNR to act

The delay is already
oppressive -- please do not
increase it.

Thank You.

Bill Sternhagen

Please leave prepared statement with the committee secretary.

JAN. 28, 1981

AGRICULTURE

BILL NO. 176

PRINT your name

NAME	REPRESENTING	Check One	
		Support	Oppose
W. H. H. H. H. H.	Dept. of Interior SF-132		
W. H. H. H. H. H.	W. I. F. E.		
W. H. H. H. H. H.	M. H. H. H.		
W. H. H. H. H. H.	Mont. Water Res. Assn.		
W. H. H. H. H. H.	Northern Plains Resource Council		
W. H. H. H. H. H.	Dept. of Natl. Res. & Cons.		
W. H. H. H. H. H.	DNRC		
W. H. H. H. H. H.	DNRC	✓	
W. H. H. H. H. H.	Northwest Mining Association		

officer
Page 6.
Line 20

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK AND IRRIGATION
STATE CAPITOL BUILDING

January 30, 1981

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 415 of the State Capitol Building, at 1:00 p.m.

ROLL CALL: Senator Ochsner, excused. All other members present.

Senator Galt called upon Les Graham, Department of Livestock, who requested a Committee bill for brand inspection pertaining to ownership changes within families.

Mr. Graham explained that Jim Moore, former Senator, had requested this change as several attorneys felt there was a loophole in the law. There is no change in the law's intent, this just clarifies the bill for inspection purposes. Statement attached.

Senator Lee moved to submit the bill as a Committee Bill. Motion carried unanimously.

Senator Galt asked the Legislative Council to draw up the Committee bill.

DISPOSITION OF SENATE BILL 176: Gary Fritz, DNRC, explained the amendments for SB 176. See Attachment. The amendments pertained to title changes and establishing fees. They also required Fish, Wildlife and Parks to pay a share of the fees.

DISPOSITION OF SB 176: Senator Graham moved to accept the amendments. Motion carried unanimously.

Senator Graham then moved DO PASS SB 176, as amended. Motion carried unanimously.

CONSIDERATION OF SENATE BILL 199: Senator Mark Etchart, District 2, said this bill allows the DNRC to suspend action and close a source within the Milk River Basin to water appropriations in times of low water tables or when there is a shortage caused by pumping from the river. This would allow continuous water flow to Malta and Glasgow for storage purposes. He explained that this bill allows the DNRC to decide if the pumps must stop diversion on the Milk River. Senator Etchart handed the Committee a petition from water conservation districts along the Milk River in support of this legislation. Attached.

Mr. Leo Berry, DNRC, said this bill better allows the DNRC to protect water rights on the Milk River. The current permits allow for pumping during spring runoff, but pumping has continued long after this time and causes shortages of water down stream. Closing the basin won't stop the problem completely, but it will give the DNRC leverage to discontinue permits, thereby easing

ROLL CALL

AGRICULTURE COMMITTEE

47 th LEGISLATIVE SESSION - - 1981

date Jan. 30, 1981

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	✓		
KOLSTAD, Allen C.	✓		
AKLESTAD, Gary C.	✓		
OCHSNER, J. Donald			✓
GRAHAM, Carroll	✓		
BOYLAN, Paul F.	✓		
CONOVER, Max	✓		
ECK, Dorothy	✓		
LEE, Gary	✓		

Each day attach to minutes.

AMENDMENTS TO SB 176

Title, Page 1, line 23
Following: "ACCOUNT;"
Strike: "ESTABLISHING FEES"
Insert: "PROVIDING A PROPORTIONATE FEE"

Title, page 2, line 1
Before: "85-2-311"
Strike: "85-2-309 THROUGH"
Insert: "85-2-310,"

Title, page 2, line 1
Following: "AND"
Strike: "85-2-124" Insert: "85-2-³¹⁶~~136~~"

Page 6, line 3 through 14
Strike: Section 3 in its entirety
Renumber: all subsequent sections

Page 6, line 20
Following: "within ~~180~~"
Strike: "240"
Insert: "180"

Page 9, line 14, through line 13 on page 12
Strike: Section 7 in its entirety
Insert: Section 7. Section 85-2-316, MCA, is amended to read:

"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant. *Additionally, a proportionate share of the department's cost of preparing an environmental impact statement shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

- (a) the purpose of the reservation;
 - (b) the need for the reservation;
 - (c) the amount of water necessary for the purpose of the reservation;
 - (d) that the reservation is in the public interest.
- (4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.
- (5) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.
- (6) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.
- (7) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for such use with the district, and the district upon approval of the application must inform the department of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the processing of such applications for the conservation districts.
- (8) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any right in existence at that time.
- (9) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.
- (10) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation,

and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(11) Nothing in this section vests the board with the authority to alter a water right that is not a reservation."

STANDING COMMITTEE REPORT

50

January 30

81

19

RESIDENT

MR.

AGRICULTURE, LIVESTOCK AND IRRIGATION

We, our committee on

SENATE

176

having had under consideration Bill No.

SENATE

176

Respectfully report as follows: That..... Bill No.

Be amended as follows:

1. Title: lines 18 and 19.

Following: "MAIL;"

Strike: "PROVIDING FOR THE HOLDING OF A HEARING ON OBJECTIONS WITHIN
A REASONABLE TIME;"

2. Title, line 20.

Following: "APPLICATION"

Strike: "WITHIN 240 DAYS"

Following: "IF"

Strike: "A HEARING IS HELD OR"

3. Title: line 23.

Following: "ACCOUNT;"

Strike: "ESTABLISHING FEES"

Insert: "PROVIDING A PROPORTIONATE FEE"

~~XXXXXXXX~~

4. Title: page 2, line 1.
Strike: "85-2-309 THROUGH"
Insert: "85-2-310,"
Following: "AND"
Strike: "85-2-124"
Insert: "85-2-316"

5. Page 6, lines 3 through 14.
Strike: Section 3 in its entirety.
Renumber: all subsequent sections.

6. Page 6, line 20.
Following: "within 180"
Strike: "240"
Insert: "180"

7. Page 9, line 14 through line 13 on page 12.
Following: "Section 7."
Strike: Section 7 in its entirety.
Insert: "Section 85-2-316, MCA, IS AMENDED TO READ:
"85-2-316. Reservation of waters."
Subsection (1) remains unchanged. Subsection (2) is amended as follows:
"(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement shall be paid by the applicant."
Subsections (3) through (11) remain unchanged.

8. page 12, line 17.
Following: "[section 1],"
Strike: "[section 4]"
Insert: "[section 3]"

9. page 12, line 18.
Strike: "[section 5]"
Insert: "[section 4]"

10. page 12, line 21.
Following: "(3)"
Strike: "[Section 7]"
Insert: "[Section 6]"

January 30 19 81

11. page 12, line 25.

Following: "instruction. Section"

Strike: "6"

Insert: "5"

12. page 13, line 3.

Following: "section"

Strike: "6"

Insert: "5"

And, as so Amended,
DO PASS.

BA.

JACK GALT,

Chairman.

STATUS SHEET

WATER

COMMITTEE

1981 Legislature

Bill No.	Subject matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 667	Revising and clarifying the adjudication of water rights re: water master, filing fee, prelim. decree, time limit extension etc.	2-6	Roth	2/19/81	DO PASS	2/20
HB 670	To ensure effective utilization of potential of the agricultural lands in Montana by reserving limited amounts of ground water.	2/6	Curtiss	2/19/81	TABLED	2/19
SB 176	For an exception to permit requirements whenever appropriation of groundwater is by means of a well or dev. spring with a max appro. of less than 100 gal per min. etc.	2/7	Stimatz	3-10-81 2/17/81	AS AMENDED BE CONCURRED IN	3/24
SB 285	To prohibit the board of Nat. Resources and Cons. from granting a min. flow reservation a preference over or priority date earlier than an ag. reserv. cons. concurr.	2/10	Story	3/5/81	BE NOT CONCURRED IN	3/26
SB 347	To create the office of chief water judge; to provide for the appointment, responsibilities, jurisdiction, and admin. requiremnts.	2/18	Galt	3/10	transferred to Appropriations Committee AS AMENDED BE CONCURRED IN	3/23
SB 297	To define "surface water and to amend the definition of "groundwater" amending Sections 85-2-102 and 85-2-501, MCA.	2/19	Turnage	3/12	BE NOT CONCURRED IN	3/20/81

1 SENATE BILL NO. 176
 2 INTRODUCED BY STIMATZ
 3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
 4 AND CONSERVATION
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND
 7 CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE
 8 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN
 9 EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF
 10 GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A
 11 MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE;
 12 PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO
 13 THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A
 14 PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER
 15 APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY
 16 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD
 17 BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED
 18 BY FIRST-CLASS MAIL; ~~PROVIDING FOR THE HEARING OF A HEARING~~
 19 ~~ON OBJECTIONS WITHIN A REASONABLE TIME; PROVIDING FOR ACTION~~
 20 ~~ON AN APPLICATION WITHIN 240 DAYS IF A HEARING IS HELD OR~~
 21 ~~OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT~~
 22 ~~HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT~~
 23 ~~APPROPRIATION ACCOUNT; ESTABLISHING FEES PROVIDING A~~
 24 ~~PROPORTIONATE FEE FOR AN ENVIRONMENTAL IMPACT STATEMENT ON~~
 25 ~~AN APPLICATION FOR A RESERVATION OF WATER; AMENDING SECTIONS~~

1 85-2-306, 85-2-307, 85-2-309 THROUGH ~~85-2-310~~, 85-2-311, AND
 2 85-2-~~312~~ 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 3 DATE."
 4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 6 Section 1. Section 85-2-306, MCA, is amended to read:
 7 "85-2-306. Exceptions to permit requirements. (1)
 8 Outside the boundaries of a controlled groundwater area, a
 9 permit is not required before appropriating groundwater by
 10 means of a well or developed spring with a maximum ~~yield~~
 11 appropriation of less than 100 gallons a per minute. Within
 12 60 days of completion of the well or developed spring and
 13 appropriation of the groundwater for beneficial use, the
 14 appropriator shall file a notice of completion with the
 15 department on a form provided by the department at its
 16 offices and at the offices of the county clerk and
 17 recorders. Upon receipt of the notice, the department shall
 18 ~~automatically--issue-a-certificate-of-water-right~~ review the
 19 notice and may, before issuing a certificate of water right,
 20 return a defective notice for correction or completion,
 21 together with the reasons for returning it. A notice does
 22 not lose priority of filing because of defects, if the
 23 notice is corrected, completed, and refiled with the
 24 department within 30 days or within a further time as the
 25 department may allow, not to exceed 6 months. If a notice is

1 not corrected and completed within the time allowed, the
 2 priority date of appropriation shall be the date of refiling
 3 a correct and complete notice with the department. A
 4 certificate of water right may not be issued until a correct
 5 and complete notice has been filed with the department. The
 6 original of the certificate shall be sent to the county
 7 clerk and recorder in the county where the point of
 8 diversion or place of use is located for recordation. The
 9 department shall keep a copy of the certificate in its
 10 office in Helena. After recordation, the clerk and recorder
 11 shall send the certificate to the appropriator. The date of
 12 filing of the notice of completion is the date of priority
 13 of the right.

14 (2) An appropriator of groundwater by means of a well
 15 or developed spring, first put to beneficial use between
 16 January 1, 1962, and July 1, 1973, who did not file a notice
 17 of completion, as required by laws in force prior to the
 18 effective date of this act, with the county clerk and
 19 recorder shall file a notice of completion, as provided in
 20 subsection (1) of this section, with the department to
 21 perfect the water right. The priority date of the
 22 appropriation shall be the date of the filing of a notice as
 23 provided in subsection (1) of this section. An
 24 appropriation under this subsection is an existing right,
 25 and a permit is not required; however, the department shall

1 acknowledge the receipt of a correct and complete filing of
 2 a notice of completion, except that for an appropriation of
 3 less than 100 gallons per minute, the department shall issue
 4 a certificate of water right.

5 ~~(2)~~(3) A permit is not required before constructing an
 6 impoundment or pit and appropriating water for use by
 7 livestock if the maximum capacity of the impoundment or pit
 8 is less than 15 acre-feet and the appropriation is from a
 9 source other than a perennial flowing stream. As used in
 10 this subsection, a perennial flowing stream means a stream
 11 which historically has flowed continuously at all seasons of
 12 the year, during dry as well as wet years. However, before
 13 constructing the impoundment or pit, the appropriator shall
 14 apply for a permit as prescribed by this part. If the
 15 department determines after processing the application that
 16 the rights of other appropriators have been or will be
 17 adversely affected, it may require the applicant to modify
 18 the construction of the impoundment or pit and issue the
 19 permit subject to such terms, conditions, restrictions, or
 20 limitations it considers necessary to protect the rights of
 21 other appropriators.

22 ~~(3)~~(4) A person may also appropriate water without
 23 applying for or prior to receiving a permit under rules
 24 adopted by the board under 85-2-113."

25 Section 2. Section 85-2-307, MCA, is amended to read:

"85-2-307. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for 3 consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified first-class mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under 85-2-316. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 30 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the

basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

~~Section 3. Section 85-2-309, MCA, is amended to read:~~
~~"85-2-309. Hearings on objections. If the department determines that an objection to an application for a permit states a valid objection to the issuance of the permit, it shall hold a public hearing on the objection within 60 days from a reasonable time after the date set by the department for the filing of objections after serving notice of the hearing by certified mail upon the applicant and the objector. The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department."~~

Section 3. Section 85-2-310, MCA, is amended to read:
 "85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no ~~hearing is held~~ objections have been received and within ~~180~~ 240 ~~180~~ 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other

1 extraordinary cases, not more than 60 days upon order of the
 2 department. If the department orders the time extended, it
 3 shall serve a notice of the extension and the reasons
 4 therefor by certified mail upon the applicant and each
 5 person who has filed an objection as provided by 85-2-308.

6 (2) However, an application may not be approved in a
 7 modified form or upon terms, conditions, or limitations
 8 specified by the department or denied, unless the applicant
 9 is first granted an opportunity to be heard. If no objection
 10 is filed against the application but the department is of
 11 the opinion that the application should be approved in a
 12 modified form or upon terms, conditions, or limitations
 13 specified by it or that the application should be denied,
 14 the department shall prepare a statement of its opinion and
 15 the reasons therefor. The department shall serve a statement
 16 of its opinion by certified mail upon the applicant,
 17 together with a notice that the applicant may obtain a
 18 hearing by filing a request therefor within 30 days after
 19 the notice is mailed. The notice shall further state that
 20 the application will be modified in a specified manner or
 21 denied, unless a hearing is requested.

22 (3) The department may cease action upon an
 23 application for a permit and return it to the applicant when
 24 it finds that the application is not in good faith or does
 25 not show a bona fide intent to appropriate water for a

1 beneficial use. An application returned for any of these
 2 reasons shall be accompanied by a statement of the reasons
 3 for which it was returned, and there shall be no right to a
 4 priority date based upon the filing of the application.
 5 Returning an application pursuant to this subsection shall
 6 be deemed a final decision of the department."

7 Section 4. Section 85-2-311, MCA, is amended to read:
 8 "85-2-311. Criteria for issuance of permit. The
 9 department shall issue a permit if:

10 (1) there are unappropriated waters in the source of
 11 supply:

12 (a) at times when the water can be put to the use
 13 proposed by the applicant;

14 (b) in the amount the applicant seeks to appropriate;
 15 and

16 (c) throughout the period during which the applicant
 17 seeks to appropriate, the amount requested is available;

18 (2) the rights of a prior appropriator will not be
 19 adversely affected;

20 (3) the proposed means of diversion, or construction,
 21 and operation are adequate;

22 (4) the proposed use of water is a beneficial use;

23 (5) the proposed use will not interfere unreasonably
 24 with other planned uses or developments for which a permit
 25 has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more ~~or~~ and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5)."

NEW SECTION. Section 5. Water right appropriation account. There is established a water right appropriation account in the earmarked revenue fund of the state treasury. All fees collected as provided in 85-2-113 shall be deposited in the account to help pay the expenses incurred by the department for administering this part, part 1, part 4, and part 5 of chapter 2, Title 85.

~~Section 7. Section 85-2-124, MCA, is amended to read:~~

~~"85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application for a combination of applications for a permit or approval or reservation of water under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application for combination of applications involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section:~~

~~The department shall notify the applicant in writing within 30 days of receipt of a correct and complete application for a combination of applications if it determines that an environmental impact statement and fee is required.~~

~~(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scales: 2% of the estimated cost up to \$1 million; plus 1% of the estimated cost over \$1 million and up to \$20 million; plus 1/2 of 1% of the estimated cost over \$20 million and up to \$100 million; plus 1/4 of 1% of the estimated cost over \$100 million and up to \$300 million; plus 1/8 of 1% of the estimated cost over \$300 million. The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.~~

~~(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an~~

1 applicant-for:
 2 (a)--the-development-of-information-by-the-applicant-or
 3 a--third-party-on-behalf-of-the-department-and-the-applicant
 4 concerning-the-environmental-impact-of-any-proposed-activity
 5 under-an-application;
 6 (b)--the--division--of---responsibility---between---the
 7 department--and--an--applicant-for-supervision-over--control
 8 of--and-payment-for-the-development-of--information--by--the
 9 applicant--or--a-third-party-on-behalf-of-the-department-and
 10 the-applicant-under-any-such-contract-or-contracts;
 11 (c)--the-use-or-nonuse-of-a-fee--or--any--part--thereof
 12 paid-to-the-department-by-an-applicant;
 13 (4)--Any--payments--made-to-the-department-or-any-third
 14 party-by-an-applicant-under-any-such-contract--or--contracts
 15 shall--be--credited--against--any-fee-the-applicant-must-pay
 16 hereunder--the-department-and-the--applicant--may--agree--on
 17 additional--credits--against--the-fee-for-environmental-work
 18 performed-by-the-applicant-at-the-applicant's--own--expenses;
 19 (5)--No--fee--as--prescribed--by--this--section--may-be
 20 assessed-against-an-applicant-for-a-permit or approval--or
 21 reservation--of--water if--the--applicant-has-also-filed-an
 22 application-for-a-certificate-of-environmental-compatibility
 23 or-public-need-pursuant-to-the-Montana-Major-Facility-Siting
 24 Act--and-the-appropriation-or-use-of-water-involved--in--the
 25 application(s)--for--permit or approval or reservation of

1 water has-been-or-will-be-studied-by-the-department-pursuant
 2 to-that-act;
 3 (6)--This-section-shall--apply--to--all--applications
 4 pending--or--hereinafter-filed--for-which-the-department-has
 5 not--as-of-April-9--1975--commenced-writing-an-environmental
 6 impact-statement--This--section-shall--not--apply--to--any
 7 application--the-fee-for-which-would-not-exceed-\$2,500;
 8 (7)--Failure--to--submit--the--fee--as-required-by-this
 9 section-shall--void-the-application(s);
 10 (8)--The-department-may--in-its-discretion--rely--upon
 11 the--environmental--studies--investigations--reports--and
 12 assessments-made-by-any-other-state-agency--or--any--person
 13 including--any--applicant--in--the--preparation--of--its
 14 environmental-impact-statements;
 15 SECTION 6. SECTION 85-2-316, MCA, IS AMENDED TO READ:
 16 "85-2-316. Reservation of waters. (1) The state or any
 17 political subdivision or agency thereof or the United States
 18 or any agency thereof may apply to the board to reserve
 19 waters for existing or future beneficial uses or to maintain
 20 a minimum flow, level, or quality of water throughout the
 21 year or at such periods or for such length of time as the
 22 board designates.
 23 (2) Upon receiving an application, the department
 24 shall proceed in accordance with 85-2-307 through 85-2-309.
 25 After the hearing provided in 85-2-309, the board shall

1 decide whether to reserve the water for the applicant. The
 2 department's costs of giving notice, holding the hearing,
 3 conducting investigations, and making records incurred in
 4 acting upon the application to reserve water, except the
 5 cost of salaries of the department's personnel, shall be
 6 paid by the applicant. In addition, a reasonable proportion
 7 of the department's cost of preparing an environmental
 8 impact statement shall be paid by the applicant.

9 (3) The board may not adopt an order reserving water
 10 unless the applicant establishes to the satisfaction of the
 11 board:

12 (a) the purpose of the reservation;

13 (b) the need for the reservation;

14 (c) the amount of water necessary for the purpose of
 15 the reservation;

16 (d) that the reservation is in the public interest.

17 (4) If the purpose of the reservation requires
 18 construction of a storage or diversion facility, the
 19 applicant shall establish to the satisfaction of the board
 20 that there will be progress toward completion of the
 21 facility and accomplishment of the purpose with reasonable
 22 diligence in accordance with an established plan.

23 (5) The board shall limit any reservations after May
 24 9, 1979, for maintenance of minimum flow, level, or quality
 25 of water that it awards at any point on a stream or river to

1 a maximum of 50% of the average annual flow of record on
 2 gauged streams. Ungauged streams can be allocated at the
 3 discretion of the board.

4 (6) After the adoption of an order reserving waters,
 5 the department may reject an application and refuse a permit
 6 for the appropriation of reserved waters or may, with the
 7 approval of the board, issue the permit subject to such
 8 terms and conditions it considers necessary for the
 9 protection of the objectives of the reservation.

10 (7) Any person desiring to use water reserved to a
 11 conservation district for agricultural purposes shall make
 12 application for such use with the district, and the district
 13 upon approval of the application must inform the department
 14 of the approved use. The department shall maintain records
 15 of all uses of water reserved to conservation districts and
 16 be responsible for rendering technical and administrative
 17 assistance within the department's staffing and budgeting
 18 limitations in the processing of such applications for the
 19 conservation districts.

20 (8) A reservation under this section shall date from
 21 the date the order reserving the water is adopted by the
 22 board and shall not adversely affect any rights in existence
 23 at that time.

24 (9) The board shall, periodically but at least once
 25 every 10 years, review existing reservations to ensure that

1 the objectives of the reservation are being met. Where the
2 objectives of the reservation are not being met, the board
3 may extend, revoke, or modify the reservation.

4 (10) The board may modify an existing or future order
5 originally adopted to reserve water for the purpose of
6 maintaining minimum flow, level, or quality of water, so as
7 to reallocate such reservation or portion thereof to an
8 applicant who is a qualified reservant under this section.
9 Reallocation of reserved water may be made by the board
10 following notice and hearing wherein the board finds that
11 all or part of the reservation is not required for its
12 purpose and that the need for the reallocation has been
13 shown by the applicant to outweigh the need shown by the
14 original reservant. Reallocation of reserved water shall not
15 adversely affect the priority date of the reservation, and
16 the reservation shall retain its priority date despite
17 reallocation to a different entity for a different use. The
18 board may not reallocate water reserved under this section
19 on any stream or river more frequently than once every 5
20 years.

21 (11) Nothing in this section vests the board with the
22 authority to alter a water right that is not a reservation."

23 NEW SECTION. Section 7. Applicability. (1)
24 Subsection (2) of [section 1] applies to all notices of
25 completion filed with the department after July 1, 1973.

1 {2} Subsection (1) of [section 1], [section 4 3], and
2 [section 5 4] apply to notices of completion and
3 applications pending before the department and to those
4 filed with the department after [the effective date of this
5 act].

6 (3) [Section 7 6] applies to applications pending
7 before the board on [the effective date of this act], as
8 well as applications filed with the board after [the
9 effective date of this act].

10 Section 8. Codification instruction. Section 6 5 is
11 intended to be codified as an integral part of Title 85,
12 chapter 2, part 3, and the provisions of Title 85, chapter
13 2, apply to section 6 5.

14 Section 9. Effective date. This act is effective on
15 passage and approval.

-End-

MINUTES OF THE SELECT COMMITTEE ON WATER
March 10, 1981

The Select Committee on Water convened at 1:30 p.m on March 10, 1981 in Room 436 of the Capitol, with CHAIRMAN AUDREY ROTH presiding.

SB. 347

SENATOR GALT opened the hearing on SB347, a bill to create the office of chief water judge, to provide for the appointment, responsibilities, jurisdiction and administrative requirements of the chief water judge. He referred to Section 3's provisions as being the main reasons for the bill.

PROPOSERS:

JUDGE W. W. LESSLEY, representing the water courts, said this bill is a tool needed by the judges. He said that he was elected as acting chief water judge, but that this law is needed to allow the courts to organize the material established by statute. He said that the water judges are on target for having the Powder River decree ready in April.

BILL ASHER, Agricultural Preservation Association, Park County Legislative Association, Sweetgrass County Preservation Association and the Stillwater County Agricultural Preservation Association, went on record as supporting the bill. (EXHIBIT I)

JOHN SCULLY, commented that Montana has been lucky to have an aggressive water judge but he felt this law was definitely needed.

LEO BERRY, representing the Department of Natural Resources, appeared in favor of the bill.

OPPOSERS: There were none.

QUESTIONS FROM THE COMMITTEE:

CHAIRMAN ROTH said that Judge Lessley is acting judge, who has been carrying on the duties and is expected to be appointed by the Supreme Court.

SENATOR GALT said he had been requested to suggest an amendment on page 3, line 5, striking December 31, 1982 and insert January 4, 1983.

REP. NEUMAN asked if this would be an additional judge or one of the basin judges. GALT said in all probability it would be one of the basin judges.

REP. CURTISS asked if the proposed amendment was added in Senate committee. SEN. GALT said it was put on by the Senate Agriculture Committee as a request of the DNRC.

REP. ASAY, referring to the fiscal note, asked if this would be an additional judge. GALT said the additional \$50,000 would only be needed if the Supreme Court decided to appoint an additional judge. LESSLEY said that if a retired judge were used, they couldn't get more than their retirement salary.

REP. HUENNEKENS said that the Fiscal Note seemed to be confusing. CHAIRMAN ROTH said that there may be an error in the Fiscal Note, and suggested that it be researched before the committee takes action on the bill.

SEN. GALT closed the hearing on the bill.

SB 176. "An Act generally revising and clarifying the appropriation and permit provisions of Title 85, ch. 2, parts 1 and 3, MCA."

SENATOR STIMATZ opened the hearing saying the bill is a housekeeping one, introduced at the request of the DNRC. It has nothing to do with the adjudication of water rights. Amendment was made in the Senate, he said, which required the deletion of most of pages 9, 10, 11 and 12. There was also a change from certified to first class. Another change was to make the bill effective upon the governor's signing it.

LEO BERRY, DNRC, said the bill changed a provision dealing with developed springs. He said they are similar to wells and should be treated the same. He also felt there was an unduly amount of time used in correcting improperly filled out forms, so he proposed a department critique form be used, and the time frame be extended. He referred to p. 3, line 14 referring to an attorney general's opinion; to the change from certified to first class mail, to page 9, line 5 requiring those wishing to reserve water to pay part of the EIS; to page 8, line 21, approval of water rights when permits are granted for certain portions of the year adding "and operation". He said the remainder of the bill was to correctly codify it. There may be some question on page 8. How a reservoir is operated may be critical, as rights may be adversely affected, he said.

RAY BECK, representing the Montana Association of Conservation Districts, said the association would like to go on record as being in favor of the bill. However, he questioned the language on page 13, line 6 through line 8. He thought "reasonable" was unclear and suggested adding "providing funds are available" to line 13 to help the conservation districts when they are unable to pay (EXHIBIT II)

CHARLIE CRANE, representing the Montana Water Development Association, supported the bill. However, he questioned the amendment of "and operation" feeling that the term was too sweeping (p8, line 21). He offered working with the department on the language.

OPPONENTS: There were none.

QUESTIONS FROM THE COMMITTEE:

REP. NEUMAN asked if the DNRC was presently paying for the environmental impact statements. BERRY said they did on the Yellowstone project. He was about \$50,000, he said.

CHAIRMAN ROTH asked what the purpose was in striking "yield" and inserting "appropriation". FRITZ said it doesn't make much difference about how much water that you can get from a well, but how much you are using from a well-- the yield. The size of the water right is the amount of water used.

The hearing on SB 176 was closed.

EXECUTIVE SESSION.

REP. ASAY moved that SB 110 be CONCURRED IN. Discussion was held on the intent of the bill and many of the members felt the bill needed clarification. REP. ASAY withdrew his motion. CHAIRMAN ROTH asked BOB PERSON to work with REP. KEMMIS on the bill.

BOB PERSON said the bill was originally designed to get a \$40 exemption for filing if you had a copy of the water right. Another section refers to evidence, saying that "evidence" of a water right could be reason for the exemption.

CHAIRMAN ROTH said people objected to paying again to file for water rights they already had.

BOB PERSON said that MCA 85-224, statement of claim subsection 2 already had a broad statement on the kind of evidence that is acceptable.

LEO BERRY said that all the bill says is that if a person has a decreed right, they wouldn't have to submit a certified copy. CHAIRMAN ROTH felt the person would have to submit a copy, but not a certified one.

REP. KEMMIS felt the present law was sufficient. PERSON said the bill was only to apply to old records that were lost. REP. KEMMIS said that an affidavit would have to be attached to the copy.

SENATE BILL 176

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

AN ACT GENERALLY REVISING AND CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE 85, CHAPTER 2, PARTS 1 AND 3, MCA.

Senate Bill 176 was introduced at the request of the Department of Natural Resources and Conservation. The purpose of the bill is to make amendments to certain sections of Montana water law that will improve the processing of water right applications, cut costs to the taxpayer and better protect existing water rights.

Section (1)

Lines 10, 11, 12, 14 and 15: A developed spring is groundwater by definition and therefore should be clearly included with this exception to permit requirements.

Lines 18 through 25 (Page 2) and Line 1 through 5 (Page 3): The Department is required by the Constitution to maintain a centralized record of Montana water rights. Existing water law makes it difficult, if not impossible, to maintain a reasonably accurate record of groundwater rights under 100 gallons per minute. An accurate water rights record is essential to protect each water right. Exorbitant processing times and costs are now required to correct each small groundwater notice of completion. Amendments to the present law would place the burden of correcting deficiencies on the owner rather than the general taxpayer.

Lines 14 through 25 (Page 3) and Lines 1 through 4 (Page 4): This new subsection (2) would implement in law the Attorney General's opinion regarding groundwater appropriation between 1962 and 1973. It provides a mechanism for groundwater rights established between 1962 and 1973 to be perfected.

Section 2, (Page 5)

Line 8: Mailing individual notices of applications by certified mail is an unnecessary expense to the taxpayer, while first class mail is sufficient and much less expensive. This amendment will save taxpayers about \$4,500 each year. In addition, rural route delivery can be made for first class mail but not for certified mail.

Section 3, (Page 6)

Lines 20, 21, and 22: The event that triggers a longer deadline should be the receipt of objections and not a hearing being held. When objections are received the department attempts to settle them rather than let the application go to an expensive hearing. These negotiations take extra time, but reduce the hearing expenses for the parties involved.

Section 4, (Page 8)

Line 21: The operation of a project is often more important than the proposed means of diversion and construction and should be judged adequate. For example, how a reservoir is operated is important and can affect downstream senior rights.

Section 4, (Page 9)

Line 2: This change eliminates the applicant for a stock pond or spreader dike irrigation system from proving by clear and convincing evidence that other rights will not be adversely affected.

Lines 5, 6, and 7: A new subsection (7) was added to incorporate case law into Montana's statutes.

Section 5, (Page 9)

Lines 7 through 13: This new section would establish a new earmarked revenue account for all fees collected by the Department for administering water law. Monies appropriated by the Legislature from this account would reduce the Department's need from the general fund.

Section 6, (Page 13)

Lines 6, 7 and 8: This change requires applicants for a reservation of water to pay a proportionate share of the cost of the environmental impact statement. The change would primarily affect agencies applying for a large instream flow reservation.

Section 7, (Page 15)

Lines 23 through 25 (Page 15) and Lines 1 through 9 (Page 16): This section makes the referenced sections retroactive.

WITNESS STATEMENT

NAME Ray Beck BILL No. SB 174
ADDRESS 7 Edwards DATE 3/10/81
WHOM DO YOU REPRESENT MACD
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Mt Assoc of Conservation Districts would like to be shown in the record as in support of SB174.

The association has one concern on page 13 lines 6 thru 8. The word reasonable is far too broad and also funding may not be available.

Amendment line 8 page 13 add
Providing funds are available.

VISITORS' REGISTER

HOUSE WATER COMMITTEE

BILL Senate Bill 176

Date 3/10/81

SPONSOR Senator Stimatx

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE SELECT COMMITTEE ON WATER
MARCH 19, 1981

The Select Committee on Water convened at 1 p.m. in Room 436 of the Capitol on March 19, 1981 with CHAIRMAN AUDREY ROTH presiding. All members were present except REPRESENTATIVES BRIGGS and KEMMIS who were absent.

SB 470.

SENATOR STIMATZ said this is a "dam" bill dealing with inspection of dams. The Statement of Intent clarifies the meaning, he said. If this law isn't passed, the federal government will regulate Montana's high-hazard dams, according to the Senator. He pointed out that the definition of high-hazard dams is on page 5, line 20.

PROPONENTS:

GARY FRITZ, DNRC, presented written testimony in favor of the bill (EXHIBIT I).

JOHN MORRISON, of Morrison-Maierle, representing the Consulting Engineering Council said the bill "ties down" the authority on the dams built in the state. In the last few months, he said, the federal government authorized a review of dams throughout the state. He distributed a letter from Harold Eagle, president of the Consulting Engineers Council, in support of the bill. (EXHIBIT II)

ROGER FOSTER, an engineer with Morrison-Maierle of Helena, said that engineers have a responsibility to the public in avoiding dam failures. He said that out of 3,500 dams in the state about 110 fall under the high-hazard category. MR. FOSTER said that dams that were soundly designed and built have deteriorated to the point of being unsafe. This bill will give the DNRC the authority to see that the dams are safe by periodic inspections. The state is completing its assessment of dams and has sent reports to owners reporting the condition. The DNRC has the responsibility for dam safety, but doesn't have the authority. He presented copies of a magazine article about dam safety. (EXHIBIT III)

MIKE KEENE, associate director of HKM Associates, said that he had sent committee members a copy of a letter earlier in March regarding his views of SB 470 and telling them why it should be passed. He felt that a permit process should be required, and the state doesn't have the mechanism to do that at the present, he stated. Montanans must consider whether they want state or federal control.

REP. CONROY moved that all amendments giving the board the authority be PASSED by the committee. He moved that wherever "department" appears, it be stricken and that "board" be inserted. The motion PASSED UNANIMOUSLY.

REP. ASAY moved amendment #3. REP. CURTISS said she was not happy with the language. REP. CONROY felt that it was redundant. BOB PERSON said that it was a clarification. The motion PASSED UNANIMOUSLY.

REP. THOFT moved that the rest of the Amendments be studied more thoroughly by the committee and acted upon at a later meeting. The MOTION PASSED UNANIMOUSLY.

SB 347.

REP. CURTISS moved that SB 347 BE CONCURRED IN.

BOB PERSON told the committee that they had been asked by the Senator (GALT) to recommend an amendment to the committee as follows: P.3,L.5/ strike: Dec. 31, 1982 Insert: Jan. 4, 1983

REP. MCLANE moved the amendment. It ws seconded and PASSED.

REP. CURTISS moved that AS AMENDED, BE CONCURRED IN. The motion was seconded and PASSED UNANIMOUSLY.

REP. CONROY moved to send the bill to APPROPRIATIONS COMMITTEE for study.

SB 176.

REP. NEUMAN moved that SB 176 BE CONCURRED IN. He suggested that the committee amend the bill on page 13, line 8. Following: applicant, insert: "unless waived by the department upon a showing of good cause by the applicant." REP. CONROY moved the Amendment be accepted by the committee. The motion PASSED UNANIMOUSLY.

BOB PERSON read the amendment proposed by the department on page 8, line 21. Following: "operation", insert: "of the appropriation works". BOB said the new language had been suggested by Mr. CHARLIE CRANE of the MWDA. CHAIRMAN ROTH moved the amendment. IT was PASSED UNANIMOUSLY.

MINUTES OF THE SELECT COMMITTEE ON WATER
March 24, 1981

The Select Committee on Water convened at 1 p.m. in Room 436 of the Capitol with CHAIRMAN AUDREY ROTH presiding. All members were present.

CHAIRMAN ROTH said that SB 470 had been returned to the Water Committee and asked that the committee take action on it at this time.

EXECUTIVE SESSION:

SB 470.

REP. CONROY moved that SB 470 DO NOT PASS.

Members of the committee discussed federal inspections done by the DNRC.

CHAIRMAN ROTH asked if federal regulations would supercede state regulations if they were established by this bill.

GARY FRITZ, DNRC, said that this bill refers to private dams on private property. Federal regulations apply to federal dams on federal property, he said. He said that federal dam inspections have rated about 50 to 60 high hazard dams in the state. Reports are given to the county attorneys, who have the responsibility to see that the dams are drained, breeched or made safe in some manner, according to MR. FRITZ.

REP. HUENNEKENS felt the fiscal note was estimated too high, since the bill provides for funding.

REP. CONROY stated that each owner would be charged \$2,000 for inspection of his dam, and he wondered how it could be collected.

MR. FRITZ said one provision of the bill is a required inspection of a high hazard dam every five years, whether or not the owner feels it is necessary.

REP. ASAY asked how many of the 110 high hazard dams were owned by the state. MR. FRITZ said about 23 were.

REP. THOFT asked if the inspection cost would be \$2,000 for irrigation districts. MR. FRITZ answered it would. He told the committee members that, if the bill doesn't pass, the only way a dam would be inspected would be upon a complaint received by someone who felt it was unsafe, or on the prerogative of the DNRC, the county or a private individual. County commissioners can also appoint someone to inspect a dam, he said.

should be preference to Indian people. At present, there are vacancies on the board, he stated, and must be filled with hired personnel rather than appointed individuals.

REP. JENSEN closed the hearing on SJR 53.

EXECUTIVE SESSION.

SJR 53.

REP. CONROY MOVED that SJR 53 be INDEFINITELY POSTPONED. The motion was seconded and PASSED UNANIMOUSLY.

SB 176.

REP. NEWMAN MOVED that SB 176 DO PASS.

BOB PERSON, legislative researcher for the committee, reminded members that two amendments had been passed on March 19, and that the committee had asked for more time to study the bill.

REP. THOFT MOVED that SB 176 DO PASS AS AMENDED. The bill PASSED UNANIMOUSLY.

REP. NEWMAN will CARRY THE BILL.

SB 243.

The committee discussed the proposed amendments.

BOB PERSON explained the DNRC amendments. (See Exhibit II in 3/12/81 Minutes.)

It was the consensus of the committee that the amendments should be addressed one at a time. The following amendments were approved by the committee:

- p.2, line 3
- p.2, line 5
- p.3, line 1

REP. THOFT MOVED for a DO PASS AS AMENDED.

After further discussion, REP. KEMMIS MOVED an amendment on page 2, line 4, that the committee insert "from the basin", and also on page 3, line 3, to do the same. The MOTION CARRIED UNANIMOUSLY.

REP. HUENNEKENS called attention to the word "tending" on page 3, line 6, asking if that wasn't a "weak assertion."

WATER COMMITTEE
AGENDA FOR MARCH 24, 1981

HEARING:

HJR 53. (Jensen-Turnage) Encouraging the Secretary of Interior to take steps to turn over the management of the Mission, Flathead, and Jocko Irrigation Districts to a local entity.

EXECUTIVE SESSION:

SB 176. (Stimatz) The following amendments were adopted by the committee on March 19:

1. An amendment on page 13, line 8 that was suggested by Ray Beck of the Association of Conservation Districts.
2. An amendment requested by Charlie Crane of MWDA.

At the hearing held March 10, the DNRC said they would be willing to work on the amendments. The language adopted by the committee was worked out by the Department.

Action: Recommendation on SB 176 as amended.

SB 285. (Story) No amendments were requested at the hearing on March 5.

Action: Recommendation on bill.

SB 243. (Graham) Extensive amendments were proposed by Northern Plains Resources Council. Those which change "department" to board" were adopted March 19.

Action: Consideration of amendments
Recommendation on bill

AMENDMENTS TO SB 176

1. Page 8, line 21.

Following: "operation"

Insert: "of the appropriation works"

2. Page 13, line 8.

Following: "applicant"

Insert: "unless waived by the department upon a showing of good
cause by the applicant"

SENATE BILL NO. 176

INTRODUCED BY STIMATZ

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE APPROPRIATION AND PERMIT PROVISIONS OF TITLE 85, CHAPTER 2, PARTS 1 AND 3, MCA; PROVIDING FOR AN EXCEPTION TO PERMIT REQUIREMENTS WHENEVER APPROPRIATION OF GROUNDWATER IS BY MEANS OF A WELL OR DEVELOPED SPRING WITH A MAXIMUM APPROPRIATION OF LESS THAN 100 GALLONS PER MINUTE; PROVIDING FOR A REVIEW OF A NOTICE OF COMPLETION PRIOR TO THE ISSUANCE OF A CERTIFICATE OF WATER RIGHT; ESTABLISHING A PROCEDURE FOR FILING A NOTICE OF COMPLETION ON GROUNDWATER APPROPRIATIONS FIRST PUT TO BENEFICIAL USE BETWEEN JANUARY 1, 1962, AND JULY 1, 1973, IF NO NOTICE OF COMPLETION HAD BEEN FILED; PROVIDING THAT A NOTICE OF APPLICATION BE SERVED BY FIRST-CLASS MAIL; ~~PROVIDING FOR THE HOLDING OF A HEARING ON OBJECTIONS WITHIN A REASONABLE TIME~~; PROVIDING FOR ACTION ON AN APPLICATION ~~WITHIN 240 DAYS IF A HEARING IS HELD OR~~ OBJECTIONS HAVE BEEN RECEIVED; PROVIDING THAT AN APPLICANT HAS THE BURDEN OF PROOF; ESTABLISHING A NEW WATER RIGHT APPROPRIATION ACCOUNT; ~~ESTABLISHING FEES~~ PROVIDING A PROPORTIONATE FEE FOR AN ENVIRONMENTAL IMPACT STATEMENT ON AN APPLICATION FOR A RESERVATION OF WATER; AMENDING SECTIONS

85-2-306, 85-2-307, ~~85-2-309 THROUGH 85-2-310~~, 85-2-311, AND 85-2-~~324~~ 85-2-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum ~~yield~~ appropriation of less than 100 gallons a per minute. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall ~~automatically issue a certificate of water right~~ review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects, if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is

1 not corrected and completed within the time allowed, the
 2 priority date of appropriation shall be the date of refileing
 3 a correct and complete notice with the department. A
 4 certificate of water right may not be issued until a correct
 5 and complete notice has been filed with the department. The
 6 original of the certificate shall be sent to the county
 7 clerk and recorder in the county where the point of
 8 diversion or place of use is located for recordation. The
 9 department shall keep a copy of the certificate in its
 10 office in Helena. After recordation, the clerk and recorder
 11 shall send the certificate to the appropriator. The date of
 12 filing of the notice of completion is the date of priority
 13 of the right.

14 (2) An appropriator of groundwater by means of a well
 15 or developed spring, first put to beneficial use between
 16 January 1, 1962, and July 1, 1973, who did not file a notice
 17 of completion, as required by laws in force prior to [the
 18 effective date of this act], with the county clerk and
 19 recorder shall file a notice of completion, as provided in
 20 subsection (1) of this section, with the department to
 21 perfect the water right. The priority date of the
 22 appropriation shall be the date of the filing of a notice as
 23 provided in subsection (1) of this section. An
 24 appropriation under this subsection is an existing right,
 25 and a permit is not required; however, the department shall

1 acknowledge the receipt of a correct and complete filing of
 2 a notice of completion, except that for an appropriation of
 3 less than 100 gallons per minute, the department shall issue
 4 a certificate of water right.

5 ~~(2)(3)~~ A permit is not required before constructing an
 6 impoundment or pit and appropriating water for use by
 7 livestock if the maximum capacity of the impoundment or pit
 8 is less than 15 acre-feet and the appropriation is from a
 9 source other than a perennial flowing stream. As used in
 10 this subsection, a perennial flowing stream means a stream
 11 which historically has flowed continuously at all seasons of
 12 the year, during dry as well as wet years. However, before
 13 constructing the impoundment or pit, the appropriator shall
 14 apply for a permit as prescribed by this part. If the
 15 department determines after processing the application that
 16 the rights of other appropriators have been or will be
 17 adversely affected, it may require the applicant to modify
 18 the construction of the impoundment or pit and issue the
 19 permit subject to such terms, conditions, restrictions, or
 20 limitations it considers necessary to protect the rights of
 21 other appropriators.

22 ~~(3)(4)~~ A person may also appropriate water without
 23 applying for or prior to receiving a permit under rules
 24 adopted by the board under 85-2-113."

25 Section 2. Section 85-2-307, MCA, is amended to read:

1 "85-2-307. Notice of application. (1) Upon receipt of
 2 a proper application for a permit, the department shall
 3 prepare a notice containing the facts pertinent to the
 4 application and shall publish the notice in a newspaper of
 5 general circulation in the area of the source once a week
 6 for 3 consecutive weeks. Before the last date of
 7 publication, the department shall also serve the notice by
 8 certified first-class mail upon an appropriator of water or
 9 applicant for or holder of a permit who, according to the
 10 records of the department, may be affected by the proposed
 11 appropriation. A notice shall also be served upon any public
 12 agency that has reserved waters in the source under
 13 85-2-316. The department may, in its discretion, also serve
 14 notice upon any state agency or other person the department
 15 feels may be interested in or affected by the proposed
 16 appropriation. The department shall file in its records
 17 proof of service by affidavit of the publisher in the case
 18 of notice by publication and by its own affidavit in the
 19 case of service by mail.

20 (2) The notice shall state that by a date set by the
 21 department (not less than 30 days or more than 60 days after
 22 the last date of publication) persons may file with the
 23 department written objections to the application.

24 (3) The requirements of subsections (1) and (2) of
 25 this section do not apply if the department finds, on the

1 basis of information reasonably available to it, that the
 2 appropriation as proposed in the application will not
 3 adversely affect the rights of other persons."

4 ~~Section 3. Section 85-2-309, MCA, is amended to read:~~
 5 ~~"85-2-309. Hearings on objections. If the department~~
 6 ~~determines that an objection to an application for a permit~~
 7 ~~states a valid objection to the issuance of the permit, it~~
 8 ~~shall hold a public hearing on the objection within 60 days~~
 9 ~~from a reasonable time after the date set by the department~~
 10 ~~for the filing of objections, after serving notice of the~~
 11 ~~hearing by certified mail upon the applicant and the~~
 12 ~~objectors. The department may consolidate hearings if more~~
 13 ~~than one objection is filed to an application. The~~
 14 ~~department shall file in its records proof of the service by~~
 15 ~~affidavit of the department."~~

16 Section 3. Section 85-2-310, MCA, is amended to read:
 17 "85-2-310. Action on application. (1) The department
 18 shall grant, deny, or condition an application for a permit
 19 in whole or in part within 120 days after the last date of
 20 publication of the notice of application if no ~~hearing is~~
 21 ~~held~~ objections have been received and within ~~180~~ 240 180
 22 days if a hearing is held or objections have been received.
 23 However, in either case the time may be extended upon
 24 agreement of the applicant, or, in those cases where an
 25 environmental impact statement must be prepared or in other

1 extraordinary cases, not more than 60 days upon order of the
2 department. If the department orders the time extended, it
3 shall serve a notice of the extension and the reasons
4 therefor by certified mail upon the applicant and each
5 person who has filed an objection as provided by 85-2-308.

6 (2) However, an application may not be approved in a
7 modified form or upon terms, conditions, or limitations
8 specified by the department or denied, unless the applicant
9 is first granted an opportunity to be heard. If no objection
10 is filed against the application but the department is of
11 the opinion that the application should be approved in a
12 modified form or upon terms, conditions, or limitations
13 specified by it or that the application should be denied,
14 the department shall prepare a statement of its opinion and
15 the reasons therefor. The department shall serve a statement
16 of its opinion by certified mail upon the applicant,
17 together with a notice that the applicant may obtain a
18 hearing by filing a request therefor within 30 days after
19 the notice is mailed. The notice shall further state that
20 the application will be modified in a specified manner or
21 denied, unless a hearing is requested.

22 (3) The department may cease action upon an
23 application for a permit and return it to the applicant when
24 it finds that the application is not in good faith or does
25 not show a bona fide intent to appropriate water for a

1 beneficial use. An application returned for any of these
2 reasons shall be accompanied by a statement of the reasons
3 for which it was returned, and there shall be no right to a
4 priority date based upon the filing of the application.
5 Returning an application pursuant to this subsection shall
6 be deemed a final decision of the department."

7 Section 4. Section 85-2-311, MCA, is amended to read:

8 "85-2-311. Criteria for issuance of permit. The
9 department shall issue a permit if:

10 (1) there are unappropriated waters in the source of
11 supply:

12 (a) at times when the water can be put to the use
13 proposed by the applicant;

14 (b) in the amount the applicant seeks to appropriate;
15 and

16 (c) throughout the period during which the applicant
17 seeks to appropriate, the amount requested is available;

18 (2) the rights of a prior appropriator will not be
19 adversely affected;

20 (3) the proposed means of diversion, or construction,
21 and operation of the appropriation works are adequate;

22 (4) the proposed use of water is a beneficial use;

23 (5) the proposed use will not interfere unreasonably
24 with other planned uses or developments for which a permit
25 has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more or and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5)."

NEW SECTION. Section 5. Water right appropriation account. There is established a water right appropriation account in the earmarked revenue fund of the state treasury. All fees collected as provided in 85-2-113 shall be deposited in the account to help pay the expenses incurred by the department for administering this part, part 1, part 4, and part 5 of chapter 2, Title 85.

Section 7. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements.
(1) Whenever the department determines that the filing of an application for a combination of applications for a permit or approval or reservation of water under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application for combination of applications involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section.

The department shall notify the applicant in writing within 30 days of receipt of a correct and complete application for a combination of applications if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to \$1 million; plus 1% of the estimated cost over \$1 million and up to \$20 million; plus 1/2 of 1% of the estimated cost over \$20 million and up to \$100 million; plus 1/4 of 1% of the estimated cost over \$100 million and up to \$300 million; plus 1/8 of 1% of the estimated cost over \$300 million. The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an

1 applicant-for;

2 (a)--the-development-of-information-by-the-applicant-or

3 a--third-party-on-behalf-of-the-department-and-the-applicant

4 concerning-the-environmental-impact-of-any-proposed-activity

5 under-an-application;

6 (b)--the--division--of--responsibility--between--the

7 department--and--an--applicant-for-supervision-over--control

8 of--and-payment-for-the-development-of--information--by--the

9 applicant--or--a-third-party-on-behalf-of-the-department-and

10 the-applicant-under-any-such-contract-or-contracts;

11 (c)--the-use-or-nonuse-of-a-fee--or--any--part--thereof

12 paid-to-the-department-by-an-applicant;

13 (4)--Any--payments--made-to-the-department-or-any-third

14 party-by-an-applicant-under-any-such-contract--or--contracts

15 shall--be--credited--against--any-fee-the-applicant-must-pay

16 hereunder--The-department-and-the--applicant--may--agree--on

17 additional--credits--against--the-fee-for-environmental-work

18 performed-by-the-applicant-at-the-applicant's--own--expenses

19 (5)--No--fee--as--prescribed-by--this--section--may-be

20 assessed-against-an-applicant-for-a-permit or-approval--or

21 reservation--of--water if--the--applicant-has-also-filed-an

22 application-for-a-certificate-of-environmental-compatibility

23 or-public-need-pursuant-to-the-Montana-Major-Facility-Siting

24 Act--and-the-appropriation-or-use-of-water-involved--in--the

25 application(s)--for--permit or-approval-or-reservation-of

1 water has-been-or-will-be-studied-by-the-department-pursuant

2 to-that-act;

3 (6)--This-section-shall--apply--to--all--applications

4 pending--or--hereinafter-filed--for-which-the-department-has

5 not--as-of-April-9--1975--commenced-writing-an-environmental

6 impact-statement--This--section-shall--not--apply--to--any

7 application--the-fee-for-which-would-not-exceed-\$2,500;

8 (7)--Failure--to--submit--the--fee--as-required-by-this

9 section-shall-void-the-application(s);

10 (8)--The-department-may--in-its-discretion--rely--upon

11 the--environmental--studies--investigations--reports--and

12 assessments-made-by-any-other-state-agency--or--any--person

13 including--any--applicant--in--the--preparation--of--its

14 environmental-impact-statements"

15 SECTION 6. SECTION 85-2-316, MCA, IS AMENDED TO READ:

16 "85-2-316. Reservation of waters. (1) The state or any

17 political subdivision or agency thereof or the United States

18 or any agency thereof may apply to the board to reserve

19 waters for existing or future beneficial uses or to maintain

20 a minimum flow, level, or quality of water throughout the

21 year or at such periods or for such length of time as the

22 board designates.

23 (2) Upon receiving an application, the department

24 shall proceed in accordance with 85-2-307 through 85-2-309.

25 After the hearing provided in 85-2-309, the board shall

1 decide whether to reserve the water for the applicant. The
 2 department's costs of giving notice, holding the hearing,
 3 conducting investigations, and making records incurred in
 4 acting upon the application to reserve water, except the
 5 cost of salaries of the department's personnel, shall be
 6 paid by the applicant. In addition, a reasonable proportion
 7 of the department's cost of preparing an environmental
 8 impact statement shall be paid by the applicant UNLESS
 9 WAIVED BY THE DEPARTMENT UPON A SHOWING OF GOOD CAUSE BY THE
 10 APPLICANT.

11 (3) The board may not adopt an order reserving water
 12 unless the applicant establishes to the satisfaction of the
 13 board:

14 (a) the purpose of the reservation;

15 (b) the need for the reservation;

16 (c) the amount of water necessary for the purpose of
 17 the reservation;

18 (d) that the reservation is in the public interest.

19 (4) If the purpose of the reservation requires
 20 construction of a storage or diversion facility, the
 21 applicant shall establish to the satisfaction of the board
 22 that there will be progress toward completion of the
 23 facility and accomplishment of the purpose with reasonable
 24 diligence in accordance with an established plan.

25 (5) The board shall limit any reservations after May

1 9, 1979, for maintenance of minimum flow, level, or quality
 2 of water that it awards at any point on a stream or river to
 3 a maximum of 50% of the average annual flow of record on
 4 gauged streams. Ungauged streams can be allocated at the
 5 discretion of the board.

6 (6) After the adoption of an order reserving waters,
 7 the department may reject an application and refuse a permit
 8 for the appropriation of reserved waters or may, with the
 9 approval of the board, issue the permit subject to such
 10 terms and conditions it considers necessary for the
 11 protection of the objectives of the reservation.

12 (7) Any person desiring to use water reserved to a
 13 conservation district for agricultural purposes shall make
 14 application for such use with the district, and the district
 15 upon approval of the application must inform the department
 16 of the approved use. The department shall maintain records
 17 of all uses of water reserved to conservation districts and
 18 be responsible for rendering technical and administrative
 19 assistance within the department's staffing and budgeting
 20 limitations in the processing of such applications for the
 21 conservation districts.

22 (8) A reservation under this section shall date from
 23 the date the order reserving the water is adopted by the
 24 board and shall not adversely affect any rights in existence
 25 at that time.

(9) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(10) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(11) Nothing in this section vests the board with the authority to alter a water right that is not a reservation."

NEW SECTION. Section 7. Applicability. (1)

Subsection (2) of [section 1] applies to all notices of completion filed with the department after July 1, 1973.

(2) Subsection (1) of [section 1], [section 4 3], and [section 5 4] apply to notices of completion and applications pending before the department and to those filed with the department after [the effective date of this act].

(3) [Section 7 6] applies to applications pending before the board on [the effective date of this act], as well as applications filed with the board after [the effective date of this act].

Section 8. Codification instruction. Section 6 5 is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, apply to section 6 5.

Section 9. Effective date. This act is effective on passage and approval.

-End-